

IT 04-9

Tax Type: Income Tax

Issue: Statute of Limitations Application

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 04-IT-0000
v.)	FEIN 00-0000000
)	Tax Year 1997
ABC, INC.,)	
)	Claim for Credit or Refund
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*, for ABC, Inc.

Synopsis:

On November 7, 2003, ABC, Inc. (“taxpayer”) executed a 1997 Form IL-1120-X that requested a refund of an overpayment of its income taxes due to the carry forward of a net operating loss. The form was mailed and postmarked on November 13, 2003. The Department of Revenue (“Department”) issued a Notice of Denial of the taxpayer’s claim for a refund on the basis that the statute of limitations for filing the amended return expired on November 12, 2003. The taxpayer timely protested the denial. The parties waived their right to an evidentiary hearing and filed a Joint Stipulation of Facts. They have requested that this matter be resolved based on the stipulations that were filed.

After reviewing the facts in this matter, it is recommended that this case be resolved in favor of the Department.

FINDINGS OF FACT:

1. On July 15, 2001, the IRS closed an audit of the taxpayer for the year ending December 31, 1996. The audit resulted in an additional federal loss in the amount of \$43,000. (Stip. #1)

2. On September 8, 2001, the taxpayer filed a 1998 IL-1120-X with the Department in an attempt to carry forward the loss from 1996. The taxpayer also filed a 2000 IL-1120 that attempted to carry forward the remaining loss. (Stip. #2)

3. On October 25, 2001, the Department sent the taxpayer a letter requesting an amended return for 1996 and a schedule NLD for 1998. (Stip. #3)

4. On December 7, 2001, the taxpayer filed a 1998 schedule NLD. (Stip. #4)

5. On April 30, 2002, the Department sent two letters to the taxpayer concerning its 1998 amended return and 2000 return. The letters indicate that an amended 1996 return had not been filed, and the loss carry forwards had not been allowed. (Stip. #5)

6. On May 17, 2002, the taxpayer filed a 2001 IL-1120 that reflected a carry forward of the entire 1996 IRS loss adjustment. (Stip. #6)

7. On May 24, 2002, the taxpayer filed a 1996 IL-1120-X that reflected the increased loss that resulted from the IRS change. (Stip. #7)

8. On June 26, 2002 and October 1, 2002, the Department sent the taxpayer checks in the amount of \$1,287.30 and \$2,611.32 respectively for the overpayment originally reported on the 2000 IL-1120, plus interest. (Stip. #8)

9. On December 23, 2002, the Department sent the taxpayer a Notice of Deficiency indicating that the refund checks issued for the 2000 return were incorrect, and the taxpayer owed additional tax for the year 2000. The Notice was issued because the Department determined that the loss from 1996 should have been carried forward to 1997 and reported on a 1997 IL-1120-X. (Stip. #9)

10. On March 21, 2003, the Department sent the taxpayer a Notice of Deficiency indicating an amount due for the year 2001. The Department determined that the 1996 loss that was reported on the 2001 IL-1120 should have been carried to 1997 and reported on a 1997 IL-1120-X. (Stip. #10)

11. On June 23, 2003, the Department sent the taxpayer form BTR-76, which indicated an overpayment of \$1,100 for 2001. This is the amount that was disallowed by the Department on March 21, 2003. (Stip. #11)

12. During the entire year of 2003, the taxpayer futilely attempted to obtain information necessary to correct a misstated apportionment between Missouri and Illinois in order to file the proper 1996 IL-1120-X as instructed. (Stip. #12)

13. On July 3, 2003, the taxpayer contacted the Department in response to a ten-day demand notice for the 2000 assessment and obtained an extension until September 1, 2003 to either pay the amount the Department had assessed for 2000 or file the 1996 IL-1120-X and 1997 IL-1120-X that properly carried forward a loss to offset the 2000 assessment. (Stip. #13)

14. On August 28, 2003, the taxpayer sought an obtained an additional extension until September 23, 2003. (Stip. #14)

15. On September 19, 2003, the Department gave the taxpayer an extension of the ten-day demand to October 9, 2003. The taxpayer then paid the 2000 assessment upon its conclusion that the 1996 misstated apportionment could not be corrected and only the 1997 IL-1120-X was to be filed. (Stip. #15)

16. On November 7, 2003, the taxpayer executed a 1997 IL-1120-X that carried forward the 1996 loss. The return requested a refund in the amount of \$1,133. The return was mailed and postmarked on November 13, 2003. (Stip. #16)

17. On March 25, 2004, the Department issued a Notice of Denial for the refund claimed on the amended 1997 return on the basis that the statute of limitations had expired on November 12, 2003. This was the first notification to the taxpayer from the Department regarding this particular statute of limitations deadline. During all of the discussions with the Department, the taxpayer was never made aware of the approaching expiration of this statute of limitations. (Stip. #17)

CONCLUSIONS OF LAW:

Section 506(b) of the Illinois Income Tax Act (“Act”) requires taxpayers to notify the Department of any change affecting their federal income tax. 35 ILCS 5/506(b). The notification must be in the form of an amended return (or another form as prescribed by the Department’s regulations) and must be filed not later than 120 days after the change has been agreed to or finally determined for federal income tax purposes. *Id.* “In any case where notification of an alteration is required by Section 506(b), a claim for refund may be filed within 2 years after the date on which such notification was due (regardless of whether such notice was given).” 35 ILCS 5/911(b). Because section 506(b) requires the notification to be filed within 120 days after the federal change became final, section

911(b) effectively gives the taxpayer two years and 120 days from the date of the federal finalization to claim any refund resulting from the federal change.

In the present case, the federal change to the taxpayer's income tax for the year ending December 31, 1996 was final on July 15, 2001. Two years and 120 days from this date is November 12, 2003. Under section 911(b), any claim for refund as a result of the change to the 1996 federal income tax should have been filed by November 12, 2003. The taxpayer filed its claim for refund on November 13, 2003, one day after the date required under the Act.

The Act does not provide any exceptions to this rule in order to allow a claim that is not timely filed. In Dow Chemical Co. v. Department of Revenue, 224 Ill.App.3d 263 (1st Dist. 1991), the court considered the taxpayer's claim for refund under the Act and determined that it was barred by the three-year statute of limitations. The court stated that the plain meaning of the statute is that the taxpayer has an affirmative duty to file for a tax refund within the appropriate time period. Dow Chemical at 267. The present case is similar in that the taxpayer had to take an affirmative step to preserve its right to a refund, and it failed to do so by the deadline required under the Act. The purpose of the limitations period is to ensure that parties exercise reasonable diligence in asserting their claims. Even though the taxpayer filed the claim for refund only one day after the limitations period expired and would otherwise be entitled to the refund, the statute of limitations prohibits the Department from issuing a refund that was not properly requested within the appropriate time period. As harsh as this result may seem, the law does not allow for a different conclusion.

Recommendation:

For the foregoing reasons, it is recommended that the Department's Notice of Tentative Denial of Claim be upheld.

Linda Olivero
Administrative Law Judge

Enter: October 22, 2004